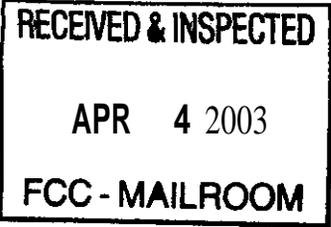


DOCKET FILE COPY ORIGINAL



April 3, 2003

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby - TW - A325
Washington, D.C. 20554

Re: "Opposition to Reinstatement of Interest &
Request to Accept Comments as Timely Filed"
Quanah, Texas - MM Docket No. 00-148

Dear Ms. Dortch:

Enclosed is an original and four (4) copies of my
"Opposition to Reinstatement of Interest and Request to
Accept Comments as Timely Filed" for Quanah, Texas.

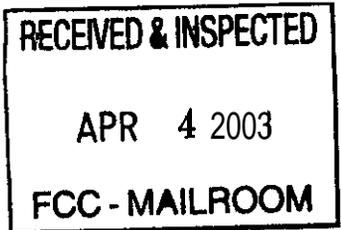
Respectfully submitted,


Charles Crawford

4553 Bordeaux Ave.
Dallas, Texas 75205
(214) 520-7077 Tele
(214) 443-9308 Fax

No. of Copies rec'd 074
List ABOVE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In the Matter)
)
Amendment of 73.202(b)) MM Docket No. 00-148
Table of Allotments) RM-9939
FM Broadcast Stations) RM-10198
(Quanah, TX))

To: John Karousos, Assistant Chief,
Audio Division of the Media Bureau

OPPOSITION TO REINSTATEMENT OF INTEREST AND REQUEST TO
ACCEPT COMMENTS AS TIMELY FILED

On January 15, 2003, Clear Channel Broadcasting Licenses, Inc. ("CCBL") and Capstar TX Limited Partnership ("Capstar") filed a Withdrawal of Interest in MM Docket No. 00-148. On March 21, 2003, CCBL and Capstar filed a partial Reinstatement of Interest in that same proceeding. After a 65 day absence, CCBL and Capstar wish to reinstate their interest in the changes set forth in Section V of the counterproposal (titled "KVCQ Alternative Proposal").

DISCUSSION

1. If the original counterproposal was defective when filed, then an alternative proposal within the original counterproposal cannot continue especially if that alternative proposal is not MX'ed to the original NPRM at Quanah. The Joint Parties describe their counterproposal as two independent alternative counterproposals. The northern portion, the "KLAK Alternative" and the southern portion, the "KVCQ Alternative". It is the northern portion that is MX'ed to the original NPRM at Quanah. If the northern portion was defective when filed then there never was an MX with the "KVCQ Alternative" proposal and the NPRM at Quanah. The counterproposal when filed had numerous fatal flaws.

COUNTERPROPOSAL USES INCORRECT COORDINATES FOR KRZB FORCED MOVE

2. At Exhibit E, Figure 8 of the Quanah counterproposal's engineering statement, the Joint Parties apparently incorrectly identified the construction permit coordinates for KRZB/ Archer City. Furthermore, the Show Cause Order for KRZB seems to have relied on the information provided in the counterproposal and restated the incorrect construction permit coordinates. To further complicate this issue, KRZB was never officially served with the Show Cause Order and therefore could not point out the error until they became aware of the Show Cause Order on or about October 2002 at which time they filed an "Opposition to Show Cause Order, and Request that Defective Counterproposal be Immediately Modified or Dismissed". In this pleading, Texas Grace Communications, the licensee of KRZB, stated that as a matter of record, it never received service of the Order to Show Cause. Texas Grace Communications further went on to say at footnote 2 of their pleading, "The only KRZB/ Archer City service ever permitted by the FCC is a matter of public FCC record, under BMPH-199902171B, Facility ID No. 79024, and bearing FCC database reference coordinates of 33 51 40 and 98 38 52. The Show Cause Order's depiction of reference coordinates 33 36 58 and 98 51 42 is clearly erroneous, and obviously does not reflect the permitted KRZB/ Archer City Channel 248C2 service (inadvertently referred to as a permitted C1 service in the opposed Order to Show Cause". When filed and as filed, the counterproposal failed to first protect the already-permitted KRZB/ Archer City service at its permitted site.

COUNTERPROPOSAL NOT TIMELY FILED

3. At the time of filing, the counterproposal was in conflict with a prior filed one-step upgrade by KICM/ Krum to channel 229C1 and the Joint Parties knew of this prior filed upgrade. On page 9 of the Quanah counterproposal Engineering Statement, the Joint Parties say, "The database currently shows an additional one-step upgrade on the part of the KICM licensee to channel 229C1." Subsequently, the KICM C1 one-step upgrade was granted on August 20, 2001.

FAILURE OF JOINT PARTIES TO PROVIDED REQUESTED DOCUMENTATION

4. On January 16, 2002, the Commission adopted a Request for Supplemental Information. In that request, the Commission ask that the Joint Parties produce the underlying agreement between themselves and AM & PM

Broadcasting, LLC concerning AM & PM's downgrade of the KICM/Krum, Texas CP from a Class C1 to a Class C2. The Commission made the assertion that the downgrading of the KICM/Krum, Texas CP was, under the rules of the FCC, a withdrawal of an expression of interest and therefore, falls under the ambit of the 1.420(j) rules as it relates to the counterproposal filed by the Joint Parties. In their April 26, 2002, Reply to Request for Supplemental Information, the Joint Parties chose not to produce the "agreement" or any other documentation required by 1.420(j), despite the compelling request by the Commission. Furthermore, these same issues existed within the counterproposal and KGOK/ Healdton, Oklahoma. The Joint Parties had an agreement with AM h PM Broadcasting to downgrade the KGOK/Healdton, Oklahoma CP from a Class C3 to a Class A and change its community of license from Healdton, Oklahoma to Purcell, Oklahoma.

COUNTERPROPOSAL CONTINGENT UPON FINAL ACTION IN ANOTHER RULEMAKING PROCEEDING

5. The Commission's policy is not to accept rulemaking proposals that are contingent on the licensing of facilities set forth in an outstanding construction permit or are dependent upon final action in another rulemaking proceeding. In the recently issued Report h Order for Ruston, Louisiana, MM Docket No. 01-19, the Commission dismissed the Ruston Broadcasting Company counterproposal because, on the date it was filed, it was contingent on the dismissal of a prior filed counterproposal.¹(See, attachment A)

6. As it turns out, we have the same facts in the Quanah counterproposal. At the time of filing, Quanah's proposed allotment of 243C2 at Lago Vista was short-spaced by -49.2 Km to a pending counterproposal to add 243A to Evant, Texas. In MM Docket No. 99-358, Evant Radio Company filed a counterproposal proposing the allotment of Channel 243A at Evant, Texas. On October 10, 2002, the same day the Quanah counterproposal was filed, Evant Radio Company filed a request to withdraw.(See, attachment B) However, the Commission did not issue a Report h Order in MM Docket No. 99-358 until July 6, 2001.(See, attachment C) Therefore, when the Quanah counterproposal was filed on

¹ Petition for Reconsideration was filed by Communications Capital Company II of Louisiana, LLC, licensee of FM Broadcast Station KNBB, Ruston, Louisiana, and successor-in-interest to Ruston Broadcasting Company, Inc., on January 15, 2003.

October 10, 2000, it was contingent upon the dismissal of the Evant Radio Company counterproposal.

I. The Ruston, Louisiana Report & Order was released on January 8, 2003. Had Clear Channel and Capstar not withdrawn from the proceeding on January 15, 2003, I would have filed timely comments as to the relevance of the Ruston Report & Order to the Quanah counterproposal. Therefore, if the Commission allows Clear Channel and Capstar to be reinstated, in order for me not to be prejudiced, the Commission should allow me to timely file the issues related to the Ruston, Louisiana Report & Order.

SUMMARY

8. At the time of filing, the counterproposal failed to protect KRZB's permitted site and was in conflict with a prior filed one-step upgrade by KICM. The Joint Parties failed to provide the requested agreements and documentation specifically requested by the Commission. The northern portion of the counterproposal, "the KLAK Alternative", failed to protect KRZB's service at its permitted site. And, at the time of filing, the southern alternative, "the KVCQ Alternative", was contingent upon the final action in MM Docket No. 99-358.

The factual information provided in this "Opposition to Reinstatement of Interest and Request to Accept Comments as Timely Filed" is correct and true to the best of my knowledge.

Respectfully submitted,



Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205
(214) 520-7077 Tele
(214) 443-9308 Fax

cc: Gene A. Bechtel, Law Office of Gene Bechtel, Suite 600, 1050 17th Street, N.W., Washington, D.C. 20036, telephone (202) 496-1289, telecopier (301) 762-0156, attorney for Charles Crawford. It is requested that the Commission and any parties who may file pleadings in the captioned matter serve copies to Mr. Bechtel as well as Charles Crawford.

April 3, 2003

Attachment A

(Ruston, Louisiana, MM Docket No. 01-19, Report & Order)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments.)	MM Docket No. 01-19 ✓
FM Broadcast Stations.)	RM-10048
(Saint Joseph, Clayton, Ruston, and)	RM-10027
Wisner, Louisiana)')	
)	
(Wisner, Ruston, Clayton, and)	MM Docket No. 01-27
Saint Joseph, Louisiana)')	RM-10056
)	RM-10118

REPORT AND ORDER

Adopted: January 6, 2003

Released: January 8, 2003

By the Assistant, Chief, Audio Division:

1. The Audio Division has before it *Notices of Proposed Rule Making* in two related dockets, MM Docket No. 01-19 (*Notice I*)³ and MM Docket No. 01-27 (*Notice II*).⁴ *Notice I* was issued in response to a rulemaking petition filed by Saint Joseph Broadcasting Company ("SJBC"). Comments were filed by BK Radio ("BK") and SJBC; comments and a counterproposal were also filed by Ruston Broadcasting Company, Inc. ("RBC"), licensee of Station KNBB(FM), Channel 257C3, Ruston, Louisiana. Reply comments were filed by SJBC, RBC, and New South Communications ("New South"). After the pleading cycle ended, Communications Capital Company II of Louisiana, LLC ("CCC"), the assignee of Station KNBB(FM), Ruston, Louisiana, filed a Supplemental Notice.

2. *Notice II* was issued in response to a rulemaking petition filed by Wisner Broadcasting Company ("WBC"). WBC filed comments, and RBC filed the identical counterproposal that it had already filed in response to *Notice I*. Reply comments were filed by WBC and New South.

BACKGROUND

3. This consolidated proceeding began with the issuance of two unrelated *Notices of Proposed Rule Making*. In *Notice I*, the staff proposed the allotment of Channel 257C3 to Saint Joseph, Louisiana, as a first local transmission service, in response to a rulemaking petition filed by SJBC on January 4, 2001. In support of its proposal, SJBC stated that Saint Joseph is an incorporated town located in Tensas Parish and had a 1990 US. Census population of 1,517 persons. To accommodate the Saint

³ The communities of Ruston, Clayton, and Wisner, Louisiana, have been added to the caption of MM Docket No. 01-19.

The Communities of Ruston, Clayton, and Saint Joseph have been added to the caption of MM Docket No. 01-27.

⁴ *Saint Joseph, Clayton, Ruston, and Wisner, Louisiana*, 16 FCC Rcd 2305 (M.M. Bur. 2001).

⁴ *Wisner, Ruston, Clayton, and Saint Joseph, Louisiana*, 16 FCC Rcd 2568 (M.M. Bur. 2001)

Joseph allotment, *Notice I* also proposed the substitution of Channel **266A** for vacant Channel **257A** at Clayton, Louisiana. *Notice I* established a counterproposal deadline of March 19, 2001.

4. *Notice II* was issued in response to a rulemaking petition filed by WBC on January 3, 2001, and proposed the allotment of Channel **300C3** to Wisner, Louisiana, as a first local transmission service. No other related channel changes are required to accommodate this allotment. In support of its proposal, WBC had argued that Wisner meets the Commission's requirements for community status because it is an incorporated town in Franklin Parish and has a 1990 U.S. census population of 1,148 persons. *Notice II* established a counterproposal deadline of March 26, 2001.

5. In response to *Notice I and Notice II*, RBC simultaneously and timely filed the identical counterproposal in both proceedings. In its counterproposal, RBC proposed to upgrade its Station KNBB(FM), Ruston, Louisiana, from Channel **257C3** to Channel **257C2** and to modify its license for Station KNBB(FM) to specify operation on Channel **257C2** pursuant to the provisions of Section 1.420(g)(3) of the Commission's Rules.⁵ To accommodate this co-channel upgrade, RBC proposed to (1) substitute Channel **266A** for Channel **257A** at Clayton, Louisiana; (2) allot Channel **300C3** at Saint Joseph, Louisiana, rather than Channel **257C3** as proposed by SJBC in MM Docket Nu. 01-19; and (3) allot Channel **279A** at Wisner, Louisiana, rather than Channel **300C3** as proposed by WBC in MM Docket No. 01-27.⁶ Further, RBC stated that it would apply for these proposed Wisner and St. Joseph allotments if they are adopted.

CONSOLIDATION OF THE PROCEEDINGS

6. As a threshold matter, we believe that it is appropriate to consolidate *Norices I and II* into a single proceeding because of the filing of RBC's identical counterproposal in both proceedings. In this regard, RBC's proposed upgrade of its Station KNBB(FM), Ruston, from Channel **257C3** to Channel **257C2** is mutually exclusive with SJBC's proposed allotment of Channel **257C3** at Saint Joseph because the channels are short-spaced under the Commission's minimum distance separation rules. As a result, RBC's counterproposal is properly filed in response to *Notice I*. However, recognizing that an alternate channel is available that would theoretically permit the grant of RBC's proposed upgrade and the allotment of a Class C3 channel at Saint Joseph, RBC has further suggested that Channel **300C3** be allotted to Saint Joseph instead of Channel **257C3** as proposed in *Notice I*. Since the proposed allotment of Channel **300C3** at Saint Joseph is short-spaced to the proposed allotment of Channel **300C3** at Wisner as proposed in *Notice II* and since this counterproposal was timely filed in both proceedings, these two proposals are mutually exclusive. Under these circumstances, we believe that the public interest is best served by considering all of these proposals in the same proceeding.

COMMENT SUMMARY

7. In its comments and counterproposal, RBC acknowledges that on March 19, 2001, the date the counterproposal was filed in both MM Dockets 01-19 and 01-27, its proposed allotment of Channel **257C2** at Ruston was short-spaced by 15.4 kilometers to a counterproposal (RM-9991) to allot Channel **257C1** to Linden, Texas, which was filed on January 2, 2001, in MM Docket No. 00-228. However, RBC contends that this counterproposal should be ignored because a request to withdraw the

⁵

47 C.F.R. § 1.420(g)(3) permits upgrades of FM stations on mutually exclusive co-channels or adjacent channels without affording other interested parties an opportunity to file competing expressions of interest in the upgraded channel.

RBC's counterproposal was originally placed on Public Notice in MM Docket No. 01-19 as RM-10048 on October 5, 2001. Report No. 2506. A corrected Public Notice was released on October 23, 2001. Report No. 2506. RBC's counterproposal was also placed on Public Notice in MM Docket No. 01-27 as RM-10118 on May 21, 2001, Report No. 2485.

Linden counterproposal was filed on March 15, 2001. Further, **RBC** contends that even if the withdrawal request is not granted, the Linden counterproposal is defective and should, therefore, not be an impediment to consideration of RBC's counterproposal.

8. RBC also recognizes that SJBC's proposed allotment of Channel 257C3 at Saint Joseph would serve 26,770 more persons than RBC's proposed allotment of Channel 300C3 to St. Saint Joseph and that WBC's proposed allotment of Channel 300C3 at Wisner would serve 16,622 more persons than RBC's proposal to allot Channel 279A at Wisner. However, RBC contends that this difference in service is offset by the gain in service to 91,607 persons that would result from the upgrade of RBC's Station KNBB(FM), Ruston, Louisiana, from a Class C3 to a Class C2 channel.⁷

9. In other comments filed in MM Docket No. 01-19, SJBC tiled a continuing expression of interest in applying for and building a station on Channel 257C3 at Saint Joseph, and BK filed an additional expression of interest in this allotment. Similarly, WBC filed comments, restating its present intention to apply for Channel 300C3 at Wisner.

10. No reply comments were filed in response to *Notice I* or *Notice II*. However, three reply comments were filed in response to the *Public Notices* announcing the filing of RBC's counterproposal.⁸ First, SJBC and WBC, who are represented by the same counsel, tiled essentially the same reply comments in both proceedings. Therein, SJBC and WBC argue that RBC's counterproposal should be dismissed because it was not technically correct at the time it was filed. In support of this position, they point out that RBC's proposed allotment of Channel 257C2 at Ruston was, at the time it was filed, short-spaced to a pending proposal to add Channel 257C1 to Linden, Texas, in MM Docket No. 00-228 and that this counterproposal had been cut-off on January 2, 2001. They state that RBC has already acknowledged this short-spacing, but they argue that RBC has erroneously claimed that its counterproposal should be accepted because a request for approval to withdraw the Linden proposal had been tiled and RBC believed the Linden proposal was defective and could be ignored. SJBC and WBC argue that long standing Commission policy requires that allotment counterproposals must "be technically correct and substantially complete at the time they are filed." Further, they contend that "[t]he Commission has also long made clear that its policy is not to accept proposals that are dependent or contingent upon finality of other actions or proceedings."⁹ Since the Linden counterproposal remained pending and since a request to withdraw the counterproposal had not been acted upon on March 19, 2001, the date that RBC filed its counterproposal, SJBC and WBC conclude that RBC's counterproposal was both technically deficient and contingent upon the dismissal of the Linden proposal and, therefore, must be dismissed pursuant to precedent.

⁷ RBC notes that Station KNBB(FM), Ruston, provides 1 mV/m (60 dBu) service to 70,885 persons in an area of 3,772 square kilometers. The proposed upgrade of Station KNBB(FM) from Channel 257C3 to Channel 257C2 could provide service to 162,492 persons in 4,730 square kilometers. See Attachment I to RBC Counterproposal at 7.

⁸ See *supra*, note 6.

⁹ *Cloverdale, Montgomery and Warrior, AL*, 12 FCC Rcd 2090, 2093 (Policy and Rules Div. 1997), *aff'd* 15 FCC Rcd 11050 (2000); *Carlisle, Irvine, and Morehead, KY*, 12 FCC Rcd 13181, 13182 (Allocations Br. 1997). See also *Fort Bragg, CA*, 6 FCC Rcd 5817 (Allocations Br. 1997); *Provincetown, Dennis, Dennis Port, West Yarmouth, and Harwich Port, MA*, 8 FCC Rcd 19 (Policy and Rules Div. 1992); and *Sanford and Robbins, NC*, 12 FCC Rcd 1 (Allocations Br. 1997).

¹⁰ SJBC's Reply Comments of October 22, 2001 at 3, citing *Columbia City, FL*, 14 FCC Rcd 21165 n.1 (Allocations Br. 1999), citing *Cur and Shoot, TX* 11 FCC Rcd 16383 (Policy and Rules Div. 1996).

ii Second, RBC filed comments" in reply to WBC and SJBC's reply comments. contending that the Linden proposal was not acceptable in MM Docket 00-228 because it was short-spaced to RBC's Station KNBB(FM), Ruston. As a result, RBC asserts that "the Linden proposal was a nullity from the time it was tiled and is not the type of existing facility or valid proposal that the Commission requires parties to take into account in presenting counterproposals." On the contrary, RBC argues that the cases involving technical correctness cited by WBC and SJBC involve conflicts with previously filed counterproposals in other proceedings that are themselves technically correct and complete. Further, noting that the Linden proposal was filed by the same counsel as represents WBC and SJBC, RBC contends that "[t]o accept WBC's argument would only serve to facilitate disingenuous allotment gamesmanship to the clear detriment of the public interest." Since the Linden proposal had been voluntarily withdrawn at the time RBC filed its counterproposal and since MM Docket 00-228 was resolved on May 18, 2001, RBC asserts that its counterproposal can now be granted.

12. Third, New South, the licensee of Station KJLO-FM, Channel 281C, Monroe, Louisiana, filed reply comments, expressing concern that RBC's proposed allotment of Channel 279A at Wisner may result in a short-spacing to Station KJLO-FM and requested additional time to conduct an engineering analysis on the Wisner proposal. However, Commission records reveal that New South did not file further comments.

DISCUSSION

13. After careful consideration of the record in this proceeding, we believe that RBC's counterproposal must be dismissed. Counterproposals are required to be technically correct and Substantially complete at the time they are filed." On March 19, 2001, the date when RBC tiled its counterproposal, RBC's proposed allotment of Channel 257C2 at Ruston was short-spaced by 15.4 kilometers to a pending counterproposal (RM-9991) to allot Channel 257C1 to Linden, Texas, in MM Docket 00-228.¹⁵ Further, as recognized by SJBC and WBC, our policy is not to accept rulemaking proposals that are contingent on the licensing of facilities set forth in an outstanding construction permit¹⁶ or are dependent upon final action in another rulemaking proceeding." Although a request to withdraw the Linden counterproposal in MM Docket 00-228 was filed on March 15, 2001, and although RBC believes that the Linden counterproposal was defective, we did not approve the withdrawal of the Linden rulemaking proposal until May 18, 2001, when a *Report and Order* was released in MM Docket 00-228.¹⁸

1

This reply comment is timely because it was filed by the deadline established in the Public Notice in MM Docket 01-19 for submitting reply comments to the filing of RBC's counterproposal.

¹² RBC's Reply Comments of October 22, 2001 in MM Docket 01-19, at 2.

¹³ *Id*

¹⁴ See e.g., *Broken Arrow and Bixby, Oklahoma, and Coffeyville, Kansas*, 3 FCC Rcd 6507 6511 n.2 (Policy and Rules Div. 1968). *recon. denied*, 4 FCC Rcd 6981 (1989); *For! Bragg, CA*, 6 FCC Rcd 6817 (1991); *Provicetown et al., MA*, 8 FCC Rcd 19 (1992); and *Sanford and Robbins, NC*, 12 FCC Rcd 1 (1997). See also cases cited by SJBC and WBC. *supra* note 9.

¹⁵ The Linden counterproposal was filed on January 2, 2001, the deadline for filing counterproposals in MM Docket 00-228, and, therefore cut-off from other rulemaking proposals on that date.

¹⁶ See *Cur and Shoot, TX*, 1 FCC Rcd 16383 (Policy and Rules Div. 1996)

¹⁷ See cases cited by SJBC and WBC, *supra* note 11. See also *Auburn, Northport, Tuscaloosa, et al., AL*, DA 02-2063, released August 30, 2002, at para. 4, *recon. pending*.

¹⁸ *Linden, White Oak, Lufkin, TX, et al.*, 16 FCC Rcd 10853 n.1 (Allocations Br. 2001). Section 1.420(j) provides procedures that must be complied with before a rulemaking proposal may be withdrawn in an FM or television allotment rulemaking proceeding. Most notably, a showing must be made that any Consideration paid for the

(continued...)

As a result, RBC's counterproposal **was**, on the date when it was filed, contingent on the dismissal of the Linden counterproposal in MM Docket 00-228, and, therefore, must be dismissed."

14. Having dismissed RBC's counterproposal, **we** are left with two rulemaking proposals that are not mutually exclusive with each other and whose grant would serve the public interest by providing first local transmission services to **two** communities. Consequently, we will allot Channel **257C3** to Saint Joseph, Louisiana." To accommodate the new allotment at Saint Joseph, we will substitute Channel 266A for vacant Channel 257A at Clayton, Louisiana." Likewise, we will allot Channel **300C3** to Wisner, Louisiana, as requested by **WBC**.²²

15. Accordingly, pursuant to the authority contained in Sections **4(i), 5(c)(1), 303(g)** and **(r)** and **307(b)** of the Communications **Act** of 1934, as amended, and Sections 0.61, **0.204(b)**, and 0.283 of the Commission's Rules, **IT IS ORDERED**, That effective February 24, 2003, the FM Table of Allotments. Section **73.202(b)** of the Commission's Rules, **IS AMENDED** for the communities listed below, as follows:

<u>Communities</u>	<u>Channel Number</u>
Saint Joseph, Louisiana	257C3
Clayton, Louisiana	266A
Wisner, Louisiana	300C3

16. Filing windows for Channel **257C3**, Saint Joseph, Channel **266A**, Clayton, and Channel **300C3**, Wisner, will **not be** opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

17. **IT IS FURTHER ORDERED**, That the counterproposal (RM-10048 and **RM-10118**) filed by Ruston Broadcasting Company, Inc., **IS DISMISSED**.

18. **IT IS FURTHER ORDERED**, That this proceeding **IS TERMINATED**

(...continued from previous page)
 withdrawal of the counterproposal **does not exceed** legitimate and prudent expenses in prosecuting the rulemaking or counterproposal.

¹⁹ With respect to RBC's contention that dismissal of its counterproposal would facilitate gamesmanship because SJBC, WBC, and the Linden counterproponent are all represented by the same counsel, we believe that this is a speculative argument. No extrinsic evidence has been presented to indicate that the Linden proposal was not tiled or withdrawn in good faith or that an abuse of the Commission's processes has occurred.

²⁰ The reference coordinates for Channel **257C3** at Saint Joseph are 32-51-44 and 91-11-41

²¹ The reference coordinates for Channel **266A** at Clayton are 31-44-48 and 91-31-16,

²² The reference coordinates for Channel **300C3** at Wisner are 32-05-28 and 91-28-57. Since we are allotting Channel **300C3** in lieu of Channel 279A at Wisner, New South's concerns regarding a short-spacing to its Station KJLO-FM, Channel 281C, Monroe, Louisiana, are moot. However, we do note that Channel 279A at Wisner could be site resbicted to clear Station **KJLO-FM**, Channel 281C, Monroe.

19. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 257C3 at Wisner, Channel 266A at Clayton, or Channel 300C3 at Wisner, Louisiana, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos,
Assistant Chief, Audio Division
Media Bureau

Attachment B

(Withdrawal of Evant Radio Company, filed on October 10,
2000)

Attachment C

(Burnet, Texas Report & Order, MM Docket No. 99-358,
dismissal of Ewant Radio Companies counterproposal to allot
Channel 243A to Ewant, Texas)

ORIGINAL

Federal Communications Commission **ECC MAIL ROOM**
DA 01-1595

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 JUL 11 P 1:51

In the Matter of)
)
Amendment of Section 73.2026)
Table of Allotments,)
FM Broadcast Stations,)
(Burnet, Texas)

MM Docket No. 99-358)
RM-9783) **RECEIVED**
RM-9838)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 27, 2001

Released: July 6, 2001

By the Chief, Allocations Branch

1. In response to a petition filed by Elgin FM Limited Partnership ("Elgin"), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 21405 (1999), seeking the allotment of channel 240A at Burnet, Texas, as that community's third local broadcast service. Elgin filed supporting comments in which it reaffirmed its support in the allotment of Channel 240A at Burnet. Burnet Broadcasting Company of Texas filed comments stating its intention to apply for an FM channel at Burnet. Counterproposals were filed by Buchanan Radioworks¹ and Evant Radio Company.² Reply comments were filed by Elgin and Evant Radio Company.

2. We believe that the public interest would be served by the allotment of Channel 240A at Burnet, Texas, as it will provide the community with additional local broadcast service. Channel 240A can be allotted to Burnet in compliance with the Commission's minimum distance separation requirements with a site restriction 12.1 kilometers (7.5 miles) northwest of the community.³ Since Burnet is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican

¹ Buchanan Radioworks ("BR") counterproposed the allotment of Channel 240A at Buchanan Dam, Texas, as that community's first local service. However, the counterproposal was not accepted for consideration in this proceeding as Channel 240A, from BR's specified transmitter site, did not provide city-grade coverage to the entire community pursuant to Section 73.315 of the Commission's Rules.

² Evant Radio Company ("Evant Radio") filed a timely counterproposal requesting the allotment of Channel 241A at Evant, Texas, as a first local transmission service. On October 10, 2000, Evant Radio advised the Commission of its withdrawal from the proceeding, providing an affidavit stating that neither Evant Radio nor its principals has received or will receive any consideration in exchange for withdrawal of its counterproposal. Although the counterproposal was not put on public notice, a rule making number was assigned to the counterproposal (RM-9838). As the counterproposal has been withdrawn, no consideration will be given to comments concerning an allotment at Evant, Texas.

³ The coordinates for Channel 240A at Burnet are 30-51-05 NL and 98-17-35 WL.

Government has been obtained for this allotment.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 20, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

community	Channel Number
Burnet, Texas	223A, 240A, 295A

4. A filing window for Channel 240A at Burnet, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

5. IT IS FURTHER ORDERED, That the counterproposal filed by Buchanan Radioworks to allot Channel 240A at Buchanan Dam Texas, IS DENIED.

6. IT IS FURTHER ORDERED, That the counterproposal filed by Evant Radio Company to allot channel 241A at Evant, Texas, IS DISMISSED (RM-9838).

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau. (202) 418-2180. Questions related to the application filing process for Channel 240A at Burnet, Texas, should be addressed to the Audio Services Division, Mass Media Bureau. (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

CERTIFICATE OF SERVICE

I, Charles Crawford, hereby certify that on this 3rd day of April, 2003, I caused copies of the foregoing "Opposition to Reinstatement of Interest and Request to Accept Comments as Timely Filed" to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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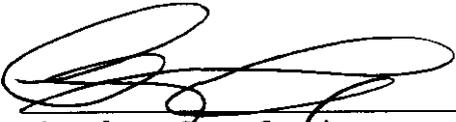
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